

EMPLOYMENT – WORKPLACE HARASSMENT

Vance v. Ball State University, --- U.S. --- (2013)

Decided June 24, 2013

FACTS: Vance, an African-American female, began her employment at Ball State University in 1989. By 2007, she was a full-time catering assistant. During the course of her employment, she was involved in contentious interactions with Davis, a fellow employee with the title of catering specialist. Both agreed, however, that “Davis did not have the power to hire, fire, demote, promote, transfer, or discipline Vance.” Vance made a number of complaints to both BSU and the Equal Employment Opportunity Commission (EEOC), making allegations of racial harassment and discrimination, with many pertaining to Davis. Despite BSU’s attempts to resolve the conflict, it continued, with Vance filing suit in 2006, claiming that “she had been subjected to a racially hostile work environment in violation of Title VII.”

The District Court ruled in favor of BSU, in summary judgment, finding that Davis was not Vance’s supervisor. Further, it agreed that BSU had “responded reasonably to the incidents of which it was aware” and as such, could not be held liable for negligence. The Seventh Circuit Court of Appeals affirmed. Vance requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Does the definition of a supervisor under Title VII include the power to make tangible employment actions against the harassed employee?

HOLDING: Yes

DISCUSSION: The Court agreed, first, that the claim of a hostile work environment was viable, under the leading case of Rogers v. EEOC.¹ In Faragher v. Boca Raton, the Court had agreed that an employer could be held liable for an employee’s unlawful harassment if the employer was negligent with respect to the offensive behavior.”² Different rules apply, however, if the “harassing employee is the plaintiff’s ‘supervisor’”³ and in such cases, the employer may be held vicariously liable, even though under the general rule, the master (employer) may not be held liable for the torts of their (servants) employees for actions taken outside the scope of their employment, which would, of course include such harassment.

As such, the determination as to whether an alleged harasser is a supervisor or simply a co-worker is critical. The Court agreed that the Seventh Circuit’s interpretation was correct, and that “an employer may be vicariously liable for an employee’s unlawful harassment only when the employer has empowered that employee to take tangible employment actions against the victim, *i.e.*, to effect a ‘significant change in

¹ 454 F.2d 234 (1971).

² 524 U.S. 775 (1998)

³ See Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)

employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”

The Court noted that the imprecision of the term “supervisor” in general usage was problematical, noting that it means different things to different people (and employers). Because of such “varying meanings both in colloquial usage and in the law,” the Court emphasized the need for a consistent usage under Title VII. The Court noted that the EEOC’s “definition of a supervisor ... is a study in ambiguity.”

The Court noted that creating a straightforward definition for a supervisor did not “leave employees unprotected against harassment by co-workers who possess the authority to inflict psychological injury by assigning unpleasant tasks or by altering the work environment in objectionable ways.” In such cases, the victims may show employer negligence in allowing the harassment to occur.

The Court ruled that an “employee is a ‘supervisor’ for purposes of vicarious liability under Title VII if he or she is empowered by the employer to take tangible employment actions against the victim.” Because it was agreed that Davis was, in fact, a supervisor under that definition, the Court affirmed the decision of the Seventh Circuit.

FULL TEXT OF OPINION: http://www.supremecourt.gov/opinions/12pdf/11-556_11o2.pdf